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 2 PETER J. TURCOTTE (SBN 168387)
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 3 275 Battery Street, 20th Floor
 4 San Francisco, CA 94111
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 Facsimile: (415) 986.8054
 jhughes@gordonrees.com
 pturcotte@gordonrees.com

6 Attorneys for Defendant and Counterclaimant
 And Third-Party Plaintiff
 7 LAPMASTER INTERNATIONAL LLC

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

| | |
|--|---------------------------|
| 11 MASON AND DIXON INTERMODAL, INC., |) Case No. CV-08-1232-VRW |
| 12 Plaintiff, |) |
| 13 v. |) |
| 14 LAPMASTER INTERNATIONAL LLC and |) |
| HARTFORD INSURANCE CO. |) |
| 15 Defendants. |) |
| 16 LAPMASTER INTERNATIONAL, LLC, |) |
| 17 Counterclaimant, |) |
| v. |) |
| 18 MASON AND DIXON INTERMODAL, INC. |) |
| 19 Counterclaimant. |) |
| 20 HARTFORD FIRE INSURANCE COMPANY, |) |
| 21 individually and as subrogee of Lapmaster |) |
| International, LLC., |) |
| 22 Third-Party Plaintiff, |) |
| v. |) |
| 23 ITG TRANSPORTATION SERVICES, INC.; |) |
| 24 WORLD EXPRESS SHIPPING, |) |
| 25 TRANSPORTATION AND FORWARDING |) |
| SERVICES, INC. d/b/a/ W.E.S.T. |) |
| 26 FORWARDING SERVICES; DOES 1 through X, |) |
| inclusive, |) |
| 27 Third-Party Defendants. |) |
| 28 AND RELATED CROSS-ACTIONS. |) |

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

**DECLARATION OF PETER J.
 TURCOTTE IN SUPPORT OF
 LAPMASTER INTERNATIONAL
 LLC's OPPOSITION TO W.E.S.T.
 FORWARDING SERVICES' MOTION
 TO DISMISS OR IN THE
 ALTERNATIVE FOR SUMMARY
 JUDGMENT, AND TO ITG
 TRANSPORTATION SERVICES,
 INC.'S JOINDER IN SAME**

Accompanying Document:
Memorandum of Points and Authorities

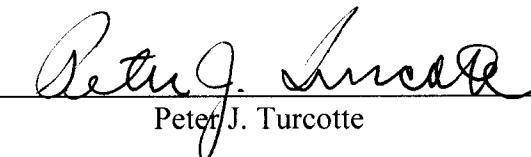
*(Assigned to the Honorable Vaughn R.
 Walker)*

Date: September 11, 2008
 Time: 2:30 pm
 Dept.: 6

1 I am an attorney at law duly licensed to practice in the State of California and am an
2 associate with the law firm of Gordon & Rees LLP, attorneys of record for defendant
3 LAPMASTER INTERNATIONAL LLC. I have personal knowledge of the matters set forth
4 herein and could and would competently testify to them if called as a witness.

5 1. Attached hereto as **Exhibit A** is a true and correct copy of e-mail correspondence
6 among counsel meeting and conferring on a discovery plan in the above-referenced matter, dated
7 August 18, 2008. It was forwarded to me by counsel in the course of handling this litigation.
8

9 I declare under penalty of perjury that the foregoing is true and correct. Executed on
10 August 21, 2008 at San Francisco, California.

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12 _____
13 Peter J. Turcotte
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Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT A

**TO THE DECLARATION OF PETER J. TURCOTTE IN SUPPORT OF
LAPMASTER INTERNATIONAL LLC'S OPPOSITION TO W.E.S.T.
FORWARDING SERVICES' MOTION TO DISMISS OR IN THE
ALTERNATIVE FOR SUMMARY JUDGMENT, AND TO ITG
TRANSPORTATION SERVICES, INC.'S JOINDER IN SAME**

Re: *Mason and Dixon Intermodal, Inc. v. Lapmaster International LLC*
United State District Court No. CV-08-01232-VRW

Peter Turcotte

From: John Hughes
Sent: Wednesday, August 20, 2008 3:37 PM
To: Peter Turcotte
Subject: FW: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

From: Jeffrey Cohen [mailto:JCohen@freightlaw.net]
Sent: Monday, August 18, 2008 2:50 PM
To: John Hughes; EJoffe@strtrade.com; Samantha Oryall; CBrennan@blwlawfirm.com; mdaley@rallaw.com
Cc: las@llcllp.com; eshibles@strtrade.com; adonnelly@blwlawfirm.com; Andrea Bean
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Counsel:

MDII additions can be found at the bottom of this e-mail.

Jeff

Proposed Discovery Plan (Lapmaster/Hartford)

1. Take the deposition of the PMK for WEST on the following issues: (a) the arrangements for the transportation of the goods from Japan to Oakland; (b) the arrangements for the transportation of the goods from Oakland to Fremont; (c) all documents pertaining to (a) and (b); all communications with Lapmaster concerning this transaction.
2. Take the deposition of the PMK for ITG on the following issues: (a) the arrangements for the transportation of the goods from Oakland to Fremont; (b) all documents pertaining to (a); (c) all communications between ITG and WEST concerning this transaction; (d) all communications between ITG and Mason Dixon concerning this transaction.
3. Take the deposition of the PMK for Mason Dixon on the following issues: (a) all communications with ITG re the transportation of the goods from Oakland to Fremont; (b) the size, dimensions, and transportation requirements for the goods being delivered from Oakland to Fremont; (c) the relationship, if any, between Mason Dixon and the shippers/shipping company responsible for transporting the goods from Japan to Oakland.
4. Take the depositions of the Mason Dixon drivers on the following issues: (a) information provided at dispatch, including name of dispatcher, what told, and what documentation provided; (b) what steps taken to ensure that the load was properly and safely transported; and (c) what happened to cause the two losses.

Proposed Discovery Plan - Additions (WEST)

For WEST please add the following:

Deposition of Lapmaster on the following issues: (a) Facts supporting negligent interference claim ((Fifth Cause of Action) (b) replacement of damaged equipment (9) all damages. Prior to the deposition we require all documents pertaining to these issues.

Deposition of Hartford on the following issues: Payments made to Lapmaster and Hartford's measure of damages. Prior to the deposition we require all documents pertaining to these issues.

Proposed Discovery Plan - Additions (MDII)

For MDII please add:

Additional topics for each of the 30(b)(6) witnesses for WEST, ITG, Lapmaster and Hartford (since the same topics are listed for each representative numbers 3,4 and 5 should be read to exclude the name of the party actually testifying in the list (i.e. WEST rep regarding agreements with WEST) :

- 1) contracts or agreements, pertaining to the transportation of the Cargo.
- 2) Any waybill, combined transport document, combined transport bill of lading, master bill of lading, bill of lading, booking notes or terms of transportation (and the reverse side of any relevant document) pertaining to the transportation of the Cargo.
- 3) All communications relating to the transportation of the Cargo internally, or with WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc or ITG Transportation, including but not limited to communications related to rate, terms of transport, limits of liability and contracts or agreements of any form.
- 4) Any agreement in any form with respect to the transportation of the Cargo with WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc MDII or ITG Transportation including but not limited to terms of transport, limits of liability and contracts or agreements of any form.
- 5) Past course of dealing with Nippon Express, MDII, Lapmaster International, LLC, Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc or ITG Transportation including but not limited to communications related to price negotiation, terms of transport, limits of liability and contracts or agreements of any form.
- 6) Any claim file related to the Cargo.
- 7) Mitigation of damages.
- 8) The condition of the Cargo at the time it was shipped from the facility of Hamai Co., Ltd. in Tokyo, Japan; condition of the Cargo at the time it was placed aboard the Cosco Hong Kong in Yokohama, Japan; condition of the Cargo upon arrival at the Port of Oakland, California; condition of the Cargo upon arrival in Fremont, California.
- 9) Insurance policies that may provide coverage for damage to the Cargo.

- 10) The role of WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc MDII or ITG Transportation, and identification of all persons with knowledge of the answer to this interrogatory.
- 11) Payments by or to WEST, Nippon Express, MDII, Lapmaster International, LLC , Hartford Insurance Co., Hamai Co., Ltd., Hayward Quartz Technology, Inc MDII or ITG Transportation in connection with the Cargo or any damages to the Cargo.
- 12) Documents pertaining to the value of the Cargo.
- 13) Documents pertaining to any damage sustained by the Cargo.
- 14) Documents pertaining to any equipment, goods or products that Hayward Quartz Technology, Inc. acquired in place of the Cargo, including but not limited to, the value of the equipment, goods or products.
- 15) ITG Procedures and documentation with respect to issuing rate quotations, ocean import quotes to shippers and the issuance of the rate quotation to WEST with respect to the cargo in this matter.
- 16) WEST terms and conditions and how they are conveyed to WEST customers
- 17) ITG preparation of import dispatches generally and preparation of the import dispatch for this freight

Based upon the testimony elicited at the depositions of the parties' corporate representatives, MDII may seek depositions of certain individuals and/or non party witnesses.

MDII also intends to serve document requests and interrogatories regarding the topics identified above. Answers, responses and responsive documents would be required in advance of any depositions.

Jeffrey D. Cohen
Keenan Cohen & Howard PC
One Pitcairn Place
Suite 2400
165 Township Line Road
Jenkintown, PA 19046
{Direct} 215-609-1104
{Fax} 215-609-1117
jcohen@freightlaw.net

THIS MESSAGE IS INTENDED FOR THE NAMED RECIPIENTS ONLY AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION. IF YOU ARE NOT A NAMED RECIPIENT, OR IF THIS MESSAGE HAS BEEN TRANSMITTED TO YOU IN ERROR, PLEASE RETRANSMIT TO ME AND THEN DELETE FROM YOUR EMAIL RECORDS.

From: John Hughes [mailto:JHughes@gordonrees.com]
Sent: Monday, August 18, 2008 3:39 PM

Case 3:08-cv-01232-VRW Document 45 Filed 08/21/2008 Page 7 of 12

To: EJoffe@strtrade.com; Samantha Oryall; CBrennan@blwlawfirm.com; Jeffrey Cohen; mdaley@rallaw.com

Cc: las@llcllp.com; eshibles@strtrade.com; adonnelly@blwlawfirm.com; Andrea Bean

Subject: Re: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Let's try again at 3 pm today.
The number is 888/435-4283.

From: John Hughes

To: 'EJoffe@strtrade.com' ; Samantha Oryall; 'CBrennan@blwlawfirm.com' ; 'JCohen@freightlaw.net' ; 'mdaley@rallaw.com'

Cc: 'las@llcllp.com' ; 'eshibles@strtrade.com' ; 'adonnelly@blwlawfirm.com' ; Andrea Bean

Sent: Mon Aug 18 12:14:39 2008

Subject: Re: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Andrea, could you please set up a conf call with all these folks for 3 pm today?

The number Samantha gave us for this morning did not work.

Thanks.

John

From: Edward Joffe

To: John Hughes; Samantha Oryall; CBrennan@blwlawfirm.com ; JCohen@freightlaw.net ; mdaley@rallaw.com

Cc: las@llcllp.com ; Elise Shibles ; adonnelly@blwlawfirm.com

Sent: Mon Aug 18 10:06:36 2008

Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Please set it up for later today.

From: John Hughes [mailto:JHughes@gordonrees.com]

Sent: Monday, August 18, 2008 1:06 PM

To: Samantha Oryall; CBrennan@blwlawfirm.com; JCohen@freightlaw.net; mdaley@rallaw.com; Edward Joffe

Cc: las@llcllp.com; Elise Shibles; adonnelly@blwlawfirm.com

Subject: Re: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

I am unable to get through; I am out of the office and my secretary is away.

Can we either do this later today, or if someone wants to try to set something up now, please let me know.

John

From: Samantha Oryall

To: John Hughes; 'Christopher Brennan' ; 'Jeffrey Cohen' ; 'mdaley@rallaw.com' ; 'ejoffe@strtrade.com'

Cc: 'las@llcllp.com' ; 'eshibles@strtrade.com' ; 'Amy Donnelly'

Sent: Fri Aug 15 16:16:00 2008

Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Date: August 18, 2008

Time: 10:00 Pacific Time

Dial-in No.: 888 435 4382

Passcode: 415 875 3122

*Samantha Oryall
Assistant to John F. Hughes
Gordon & Rees LLP*

275 Battery St. Suite 2000
 San Francisco, CA 94111
 (415) 875-4134 Direct
 (415) 986-8054 Fax

From: John Hughes
Sent: Friday, August 15, 2008 3:43 PM
To: 'Christopher Brennan'; Jeffrey Cohen; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

i think we can set that up.

(Samantha, can you let everyone know what number to use for this conf call?)

thanks.

From: Christopher Brennan [mailto:CBrennan@blwlawfirm.com]
Sent: Friday, August 15, 2008 3:38 PM
To: Jeffrey Cohen; John Hughes; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Does anyone have a conference call set up at their firm?

Christopher J. Brennan
 Bauman Loewe Witt & Maxwell, PLLC
 8765 E. Bell Road, Suite 204
 Scottsdale, Arizona 85260
 (480) 502-4664
 (480) 502-4774 (fax)

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From: Jeffrey Cohen [mailto:JCohen@freightlaw.net]
Sent: Friday, August 15, 2008 2:32 PM
To: John Hughes; Christopher Brennan; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Let's have a call at 10:00 am pacific on Monday, even if it is just John and Chris – others of course welcome.

Jeff

Jeffrey D. Cohen
 Keenan Cohen & Howard PC
 One Pitcairn Place
 Suite 2400
 165 Township Line Road
 Jenkintown, PA 19046
 {Direct} 215-609-1104
 {Fax} 215-609-1117

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From: John Hughes [mailto:JHughes@gordonrees.com]
Sent: Friday, August 15, 2008 5:27 PM
To: Jeffrey Cohen; Christopher Brennan; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

I, too, am only available on Monday (except between 11 am and 3 pm) next week.

From: Jeffrey Cohen [mailto:JCohen@freightlaw.net]
Sent: Friday, August 15, 2008 2:23 PM
To: Christopher Brennan; John Hughes; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Counsel,

I will be in on Mon, Tues and Wed of next week. I will send my proposal early next week. I am available for a call from 10 am until 12 pm (Pacific) on Tues or Wed of next week. Please let me know if you all are available.

Jeff

Jeffrey D. Cohen
Keenan Cohen & Howard PC
One Pitcairn Place
Suite 2400
165 Township Line Road
Jenkintown, PA 19046
{Direct} 215-609-1104
{Fax} 215-609-1117
jcohen@freightlaw.net

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From: Christopher Brennan [mailto:CBrennan@blwlawfirm.com]
Sent: Friday, August 15, 2008 5:07 PM
To: Jeffrey Cohen; John Hughes; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall; Amy Donnelly
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Counsel-

Are we able to agree on the proposed discovery plan? I would like to avoid having to appear on Thursday, August 21, 2008, for the further CMC if possible.

Christopher J. Brennan
Bauman Loewe Witt & Maxwell, PLLC
8765 E. Bell Road, Suite 204
Scottsdale, Arizona 85260
(480) 502-4664
(480) 502-4774 (fax)

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From: Jeffrey Cohen [mailto:JCohen@freightlaw.net]
Sent: Monday, August 11, 2008 9:45 AM
To: John Hughes; Christopher Brennan; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

John,

This is a good start. We need to add/modify some items. I am available from 10 am until 12 pm (Pacific) tomorrow for a call.

Jeff

Jeffrey D. Cohen
Keenan Cohen & Howard PC
One Pitcairn Place
Suite 2400
165 Township Line Road
Jenkintown, PA 19046
{Direct} 215-609-1104
{Fax} 215-609-1117
jcohen@freightlaw.net

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From: John Hughes [mailto:JHughes@gordonrees.com]
Sent: Thursday, August 07, 2008 9:28 PM
To: Jeffrey Cohen; cbrennan@blwlawfirm.com; mdaley@rallaw.com; ejoffe@strtrade.com
Cc: las@llcllp.com; eshibles@strtrade.com; Samantha Oryall
Subject: RE: Mason & Dixon Intermodal, Inc. v. Lapmaster International, LLC and Hartford Fire Insurance Co.

Dear Counsel,

I am writing to get the ball rolling on the submission of a discovery plan that we are supposed to exchange tomorrow. I have spoken with Hartford's atty, Chris Brennan, and we have come up with a general outline (see

I would suggest that everyone weigh in with their own plan, and that we then set up a conference call, perhaps next Monday or Tuesday, to discuss this in more detail. (Please get back to me with your availability.) Ideally, we could agree to many facts that are not in dispute, and thereby eliminate some of the fact gathering that we all need to do. Alternatively, we should discuss whether there are other ways of gathering the information without having to take a lot of depositions at this point.

I look forward to hearing back from each of you.

John

P.S. I assume all counsel are copied on this email. If anyone notices that someone is missing, please forward this email to them. Thanks.

Proposed Discovery Plan (Lapmaster/Hartford)

1. Take the deposition of the PMK for WEST on the following issues: (a) the arrangements for the transportation of the goods from Japan to Oakland; (b) the arrangements for the transportation of the goods from Oakland to Fremont; (c) all documents pertaining to (a) and (b); all communications with Lapmaster concerning this transaction.
2. Take the deposition of the PMK for ITG on the following issues: (a) the arrangements for the transportation of the goods from Oakland to Fremont; (b) all documents pertaining to (a); (c) all communications between ITG and WEST concerning this transaction; (d) all communications between ITG and Mason Dixon concerning this transaction.
3. Take the deposition of the PMK for Mason Dixon on the following issues: (a) all communications with ITG re the transportation of the goods from Oakland to Fremont; (b) the size, dimensions, and transportation requirements for the goods being delivered from Oakland to Fremont; (c) the relationship, if any, between Mason Dixon and the shippers/shipping company responsible for transporting the goods from Japan to Oakland.
4. Take the depositions of the Mason Dixon drivers on the following issues: (a) information provided at dispatch, including name of dispatcher, what told, and what documentation provided; (b) what steps taken to ensure that the load was properly and safely transported; and (c) what happened to cause the two losses.

San Francisco * San Diego * Los Angeles * Sacramento * Orange County * Las Vegas * Portland * Seattle * Houston * Chicago * Phoenix * Dallas *
New York * Long Island * Newark * Denver

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To ensure compliance with requirements by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

GORDON & REES LLP
<http://www.gordonrees.com>

Re: *Mason and Dixon Intermodal, Inc. v. Lapmaster International, LLC*
 United States District Court – Northern District No. CV 08 01232 VRW

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On August 21, 2008, I served the within documents:

DECLARATION OF PETER J. TURCOTTE IN SUPPORT OF LAPMASTER INTERNATIONAL LLC'S OPPOSITION TO W.E.S.T. FORWARDING SERVICES' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT, AND TO ITG TRANSPORTATION SERVICES, INC.'S JOINDER IN SAME

- by electronically serving the document(s) described above via United States District Court Electronic Case Filing website (CM/ECF notification system) on the recipients designated on the electronic service list that is located on the Pacer website and as set forth below.:

Attorneys for WEST Forwarding

Elise Shibles
 Edward M. Joffe
 Sandler Travis & Rosenberg
Email: eshibles@strtrade.com
Email: ejoffe@strtrade.com

Attorneys for Hartford Fire Ins. Co.

Christopher J. Brennan
 Bauman Loewe Witt & Maxwell
Email: cbrennan@blwlawfirm.com

Attorneys for ITG Transportation

Michael Joseph Daley
 Ryan & Lifter
Email: mdaley@rallaw.com

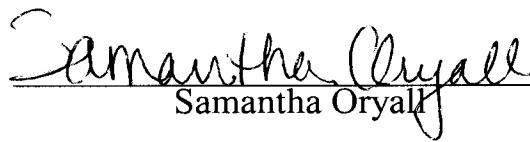
Attorneys for Plaintiff

Matthew S. Conant
 Lori Ann Sebransky
 Lombardi Loper & Conant
Email: msc@llcllp.com
Email: las@llcllp.com

Attorneys for Plaintiff

Paul D. Keenan
 Jeffrey D. Cohen
 Keenan Cohen & Howard
Email: jcohen@freightlaw.net
Email: pkeenan@freightlaw.net

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 21, 2008, at San Francisco, California.


 Samantha Oryall